

REMARKS

The Specification has been amended for clarification purposes only, and does not present new matter. No amendments, additions, or cancellations have been made to the present claims. Therefore, claims 1-20 are currently pending in the case. Further examination and reconsideration of the presently claimed application are hereby respectfully requested.

Section 103 Rejections

Claims 1-20 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,675,230 to Lewallen in view of a publication written by Amy Fowler, entitled "Mixing Heavy and Light Components" (hereinafter "Fowler").

The primary reference of Lewallen is not available as prior art for the current rejection. As noted above, claims 1-20 were rejected over a combination of Lewallen and Fowler. As will be set forth in more detail below, Lewallen is not usable in a 35 U.S.C. § 103 rejection since it was commonly owned with the present application at the time the subject invention was made and was not published prior to the filing of the present application.

Under the American Inventors Protection Act of 1999 ("the AIPA"), prior art available only under 35 U.S.C. § 102(e) is not usable in a 35 U.S.C. § 103 rejection if the art meets the common ownership requirements of 35 U.S.C. § 103(c) as amended. The following is a quotation of the revised 35 U.S.C. § 103(c) (as of December 14, 2000):

Subject matter developed by another person, which qualifies as prior art only under one of more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

The AIPA amended 35 U.S.C. § 103(c) to state that art which qualifies as prior art only under 35 U.S.C. §§ 102(e), (f), or (g) is not available for rejections under 35 U.S.C. § 103 if that art was commonly owned or subject to an obligation of assignment at the time the subject invention was made. This change to 35 U.S.C. § 103(c) is effective for any application filed on or after November 29, 1999.

It is noted that upon filing of the present application, the patent to Lewallen and the present application were commonly owned by or subject to an obligation of assignment to the same assignee, International Business Machines of Armonk, NY. In addition, the present application was filed after November 29, 1999 and is subject to the amendments to § 103(c) made by the AIPA. Consequently, Lewallen is not available as prior art against claims of the present application.

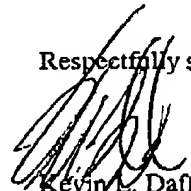
Since Lewallen is not available as prior art under the current rejection, no combination of Lewallen with other cited art may be used for the current rejection. As such, the combination of the references cited in the Office Action for the § 103(a) rejections cannot be used against the presently claimed case. Accordingly, removal of this rejection is respectfully requested.

CONCLUSION

This response constitutes a complete response to all issues raised in the Office Action mailed January 29, 2004. In view of the remarks traversing rejections, Applicants assert that pending claims 1-20 are in condition for allowance. If the Examiner has any questions, comments, or suggestions, the undersigned attorney earnestly requests a telephone conference.

No fees are required for filing this amendment; however, the Commissioner is authorized to charge any additional fees which may be required, or credit any overpayment, to Conley Rose, P.C. Deposit Account No. 03-2769/5468-08100.

Respectfully submitted,


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